THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. Nos. 4430 and 5104 of 2000

Common order:

While the petitioners were working with the respondent-A.P. State Textile Development Corporation Limited (hereinafter referred to as 'the Corporation'), the Government of Andhra Pradesh vide G.O. Ms. No. 245, Industries and Commerce (Textile) Department, dated 26.12.1996, introduced Voluntary Retirement to Public Sector employees. The applications submitted by the petitioners for taking voluntary retirement were accepted, and they were relieved from service on 31.10.1999. At the time of paying the retrial benefits, the petitioners state that the respondent-Corporation have deducted certain amounts from their retrial benefits, being the amounts relating to the credit facility, said to have been extended by them to the employees of public and private sector undertakings while they worked as Managers in the Show Rooms of the respondent-Corporation. The petitioners state that they extended the credit facility as per the various circulars of the respondent-Corporation, and at no point of time during their employment with the respondent-Corporation, the respondent-Corporation have informed the petitioners that they would be responsible for the recoveries relating to the credit facility extended by them. They having not been put on notice, the petitioners state that the action of the respondent-Corporation in recovering the amounts, allegedly relating to the credit facility extended by them to the employees of public and private sector undertakings while they worked as Managers in the Show Rooms of the respondent-Corporation, from their retrial benefits payable to them, is illegal and

arbitrary, and more so when Clause 10 of the Voluntary Retirement Scheme, introduced by the Government of Andhra Pradesh, vide G.O. Ms. No. 245, dated 26.12.1996, does not postulate deduction of the outstanding relating to the credit facility extended by them by virtue of their employment to the employees of public and private sector undertakings. In support of their argument that the petitioners having retired, the respondent-Corporation is not entitled to recover the amount from their retrial benefits, they placed reliance on the judgment of the apex Court in **Bhagirathi Jena v. Board of Directors, O.S.F.C.**[1], and the deductions, if any, from their retrial benefits, should only be in terms of the terms and conditions of the Voluntary Retirement Scheme, he relied on a judgment of a learned Judge of this Court in W.P. No. 28456 of 1997, dated 22.01.1998. It is submitted that till today, no enquiry has been conducted to ascertain as to what are the exact amounts, which the petitioners were liable to recover in respect of the credit-sales made by them, and unless the respondent-Corporation conducts an enquiry and fixes the liability, they cannot recover the amounts from the petitioners.

The respondents filed counter. The learned Standing Counsel for the respondents reiterating the counter averments submitted that the petitioners who worked as Managers of the Show Rooms of the respondent-Corporation are responsible for the recoveries of the amounts from the employees of the public and private sector undertakings to whom they have supplied the cloth on credit. The petitioners despite repeated reminders failed in their duties to recover the amounts. Because of the inaction and negligence on the part of the petitioners in recovering the amounts, the respondent-corporation had to suffer huge losses. Therefore, the respondent-Corporation had no other go, but to deduct the amounts, covering the credit facility

extended by them, which remained unrecovered. Since the responsibility is fixed on the petitioners for recovery of the dues, no exception can be taken to the action of the respondent-Corporation in deducting the amounts, which the petitioners were responsible to recover from the employees to whom they supplied cloth on credit. The learned Standing Counsel submitted that in similar circumstances, when the respondent-Corporation sought to recover the amounts relating to non-recovery of the yarn dues from its employees, they filed writ petitions in W.P. No. 1295, 1300 and 1325 of 2000, and a learned Judge of this Court, vide order dated 18.11.2000, disposed of the writ petitions directing to conduct an enquiry.

Having heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation and having perused the material available on record, the only question that arises for consideration in this writ petition is whether the respondent-Corporation are justified in recovering the amounts, relating to the credit facility, said to have been extended by the petitioners to the employees of the public and private sectors undertaking while they worked as Managers of the Show Rooms, from their voluntary retirement benefits?

The petitioners admittedly opted for voluntary retirement in terms of G.O. Ms. No. 245, Industries and Commerce (Textile) Department, dated 26.12.1996, issued by the Government of Andhra Pradesh, introducing Voluntary Retirement to Public Sector employees. Under the scheme, those opting for voluntary retirement, were to be paid terminal benefits and *ex-gratia*. All the amounts payable under the scheme are to be settled within 60 days from the date of acceptance of the request for VRS.

Clause 10 of the Scheme, which deals with adjustments reads:

All outstanding amounts and dues payable to the organization, such as outstanding advances, loans, co-operative societies loans as well as money payable under any court decree shall be adjusted from terminal benefits, and only the net benefit amount after all such adjustments shall be paid to the employee.

A bare reading of the above clause, would make it clear that the amount, which the respondent-Corporation had recovered from the retrial benefits of the petitioners, is not covered. Since the amount withheld by the respondent-Corporation, is not adjustable against the retrial benefits of the petitioners, the action of the respondent-Corporation in withholding the impugned amounts, from the retrial benefits of the petitioners is bad, illegal and arbitrary.

Though the respondent-Corporation contends that petitioners are responsible for the recovery of the credit dues from the employees to whom they sold the cloth on credit, the fact remains, the same is disputed by the petitioners contending that they are not responsible. The respondent-Corporation, except stating that the petitioners are responsible have not produced any material which obligates them to recover the credit dues from the employees to whom they sold the cloth on credit. This apart, neither the recovery statement nor the counter-affidavit discloses the details of the credit-sales made by the petitioners to the employees of the public and sector undertakings, and whether the employees who have taken the cloth on credit, have paid any amounts, and if so, what are the payments made by them, and in the absence of any such details, the respondent-Corporation cannot justify the recovery of the impugned amounts from the retrial benefits of the petitioners.

In that view of the matter, the action of the respondent-Corporation in recovering the credit dues of the credit sales made by them while they worked as Managers of Show Rooms of the respondent-Corporation, from the retrial benefits of the petitioners, is

illegal and arbitrary, and more so when Clause 10 of G.O. Ms. No. 245, Industries and Commerce (Textile) Department, dated 26.12.1996, in terms of which, the petitioners opted for voluntary retirement, does not postulate recovery of credit-sales dues from the retrial benefits of the employees who opt VRS.

At this stage, the learned Standing Counsel for the respondent-Corporation submits that they may be permitted to conduct enquiry with respect to recovery. They are at liberty to do so. But in the guise of conducting enquiry, they cannot be permitted to withheld the amounts payable to the petitioners indefinitely. The respondent-Corporation shall release the amounts payable to the petitioners, which they have withheld from the retrial benefits of the petitioners, subject to the petitioners giving an undertaking that in the event they are found responsible for recovery of the credit-sales dues, they shall repay the amounts to the extent of the credit-sales dues, which they failed to recover. The respondents are at liberty to conduct enquiry, and if the petitioners are found to be responsible for recovery the credit-sales dues, the respondents may recover the same to the extent they were responsible.

With the observations as above, the writ petitions are allowed. No costs.

N.V. RAMANA, J.

Dated: 18.10.2006
KSR

[1] Air 1999 sc 1841